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April 5th, 2009

Commissioner for Patents
ATTN: Cesar B. Paula
PO Box 1450
Alexandria, VA 22313-1450

re: Patent Application **10/751,021**, reply to notice of Final Action mailed January 6th, 2009

Dear Mr. Paula,

I am writing in response to your Notice of Final Action mailed January 6th, 2009, which was a response to my letter to you of July 28th, 2008.

You note in the action that Figures 1a and 2 are not in compliance with 37 CFR 1.84. However, those figures were for support of Claims 1-5 that were later withdrawn – so the figures are not needed. I searched the USPTO website and could not find mention of how to remove figures from the application.

Your action maintains Claims 6-11 and 22-25 as rejected as being anticipated by Musicbrainz.org website, "Introduction, How Does Musicbrainz Work, Metadata Initiative," as found at http://archive.org, 1/2001. I have visited the archive and retrieved the information to which you refer, and have attached it as Exhibit A to this letter.

The "MusicBrainz Metadata Initiative" states in the "Introduction" section that, "The MusicBrainz Metadata Initiative" is a content description model for audio and video tracks on the Internet." The "Introduction" section goes on to state that "The MM Initiative uses RDF/XML to facilitate the exchange of audio/video related metadata. This document describes an RDF namespace that should be used in conjunction with the Dublin Core metadata recommendation. This specification will be used by MusicBrainz.org to communicate metadata queries. All the data returned from the server will be in the MM/Dublin Core RDF format. Furthermore, this format will hopefully be used by the Open Source audio codec Vorbis to store audio/video metadata with audio/video tracks."

The document then goes on to specify the "MusicBrainz Elements." All elements are related to the actual production of the audio or video track, such as Lyrics, Genre, etc. MusicBrainz also extends the the base set of qualifiers for the Dublin Core Elements. One such example is that of "Role." The roles are defined on page 11-12 of Exhibit A. These defined a fixed set of roles related to the performance, recording and production of the audio or video. For example, "Performer," "Orchestra", "Engineer" are such examples. All of these elements are considered in the Art to be the "metadata" of the audio or video. These metadata should be considered as separate and distinct from user-generated content that third-party users wish to freely associate with a particular audio or video performance. MusicBrainz associates fixed set of elements as given in the specification, which will used for every metadata query. Those elements as given in the specification, and only those elements, form the data returned in response to a query. The MusicBrainz utility is limited to retrieving the data contained by the MusicBrainz elements, which is the data commonly known in the trade as the "metadata" for the audio or video. What it does not allow, nor anticipate, is the free form addition of user-generated content, a different utility altogether.

In rejecting Claim 6, you state that "Musicbrainz discloses taking audio track information enter by users--- third parties---and uploading it to a musicbrainz database network on the Web. If users or music

companies use a media file known to the database in their computer, a player downloads, and displays the information from the online database, and allows the users to browse the displayed information." This you incorrectly state constitutes parts a), b), c) and d) of Claim 6. While parts a), b) and c) are similar, the key part d) is not. The MusicBrainz utility uploads the "singnature" of the audio track to the MusicBrainz server, for the purpose of indentification. Then the metadata is transmitted back to the third party for browsing (which metadata is defined by the MusicBrainz Elements). Part d) of Claim 6 concerns the display of content generated by a third party to be displayed to another third party. This content is generated by the third-party user in its entirety, not the metadata defined by the MusicBrainz Elements. MusicBrainz decides what is returned to the third party, not another third party. A later development for MusicBrainz (which I will deal with shortly) allows end-users to "edit or add" content but only to the MusicBrainz Elements associated by MusicBrainz with the digital media.

As an example of utility, assume that NPR (National Public Radio) has created a "podcast" wherein an overview of the patent process is given. The utility of the MusicBrainz prior art would be to convey back to an end user only that information that is allowed by the MusicBrainz elements (and only if MusicBrainz could identify the podcast) and which had been created by MusicBrainz in advance the third party access. The utility of my invention is that it would allow you, Mr. Paula, or any other third party, to easily associate online content with the podcast. You might associate not only the USPTO website, but specific pages within the website, along with your expert commentary, and a means to communicate with others via a message board accessible to any third party listening to that same podcast. My invention allows for utility not anticipated by MusicBrainz, because MusicBrainz clearly limits the scope to a predefined set of elements known as the MusicBrainz Elements.
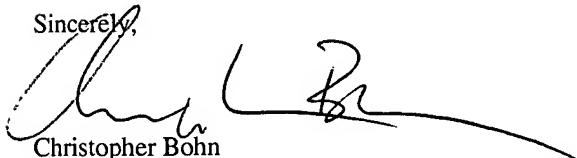
Regarding Claim 10. You reject the claim because MusicBrainz discloses using a file signature to lookup related information from the database – thus trumping my claim of *"using the metadata obtained from the digital media file as parameters in a database query to retrieve content resources associated with the digital media."* The MusicBrainz information clearly states that it uses a signature derived from an extended sample of the audio signal itself to identify the digital performance – that signature is then used as the means for lookup. This is different than using the metadata such as artist and title to identify the digital performance.

All of your rejections of the other Claims 7-9, 11-12, 21-25 and 27 are based on the reasoning you used to reject Claims 6 and 10. Because I believe that your rejection of Claims 6 and 10 are incorrect, then it follows that the rejection of the others is also incorrect.

I also looked for the "Music Brains Initiative" that you mentioned in your letter. The earliest one I could find on http://archive.org is from April 2004, which is subsequent to my provisional patent application. I have attached that as Exhibit B. It shows that even at that late date, the extent to which MusicBrainz to edit or add content to their database is solely for correction of material put forth by MusicBrainz itself. In no way is this equivalent to freely associating content with digital media as per my invention.

I have tried to call you and have left a message for you. I would like to know what options I have to further my patent claims.

Sincerely,

Christopher Bohn